

Emperor Vs. Ram Din

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Court : Allahabad

Decided On : Aug-06-1924

Reported in : AIR1925All292; 85Ind.Cas.942

Appellant : Emperor

Respondent : Ram Din

Judgement :

Boys, J.

1. This is a reference by the District Magistrate of Jalaun asking this Court to set aside the conviction of one Earn Din under Section 379 of the Indian Penal Code and ordering his retrial solely with the idea that he may be given a more severe sentence, the desirability of which is indicated by the fact that it has since been discovered that the accused has no less than six previous convictions. This in effect amounts to asking this Court to set aside the conviction because the Crown has since discovered further evidence which would be relevant on the question of sentence. It is certain that, ordinarily speaking, I do not say never, this Court would not set aside a conviction at the instance of the accused on the ground that he had not led evidence in his defence which it was possible for him to have led if he had exercised proper diligence. How much more so would it be improper under similar circumstances to set aside a conviction at the instance of the Crown. The police reported on the 15th of June, 1924, that the antecedents of the accused had not

been traced and if they wanted more time they could have asked the Magistrate for it. He was, however, allowed to proceed to a conviction on the 19th of June, 1923. In effect this Court is asked to remedy, to the prejudice of the accused, the consequences of neglect by the Executive to make proper enquiries and I do not think that this Court should interfere. The same opinion was expressed by Mr. Justice Knox in *Queen Empress v. Kunjal* (1891) A.W.N. 80 I therefore decline to interfere. Let the record be returned.

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